

## **IC 5-22-14**

### **Chapter 14. Small Business Set-Aside Purchases**

#### **IC 5-22-14-1**

##### **"Small business"**

Sec. 1. As used in this chapter, "small business" means a business that:

- (1) is independently owned and operated;
- (2) is not dominant in its field of operation; and
- (3) satisfies the criteria:
  - (A) in the rules adopted under section 3 of this chapter; or
  - (B) to be a veteran owned small business concern as specified in section 3.5 of this chapter.

*As added by P.L.49-1997, SEC.1. Amended by P.L.90-2013, SEC.1.*

#### **IC 5-22-14-2**

##### **"Small business set-aside"**

Sec. 2. As used in this chapter, "small business set-aside" means a purchase in which the solicitation states that offers will be accepted only by small businesses.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-14-3**

##### **Rules; businesses that are not small businesses**

Sec. 3. (a) A governmental body may adopt rules to implement this chapter. The Indiana department of administration shall adopt rules under IC 4-22-2 to implement this chapter.

(b) The rules adopted by a governmental body must establish criteria for determining qualifications as a small business. In establishing criteria, the rules may use any standards established for determination of small business status that are used by an agency of the federal government. A governmental body may also receive assistance from the Indiana economic development corporation to establish criteria or to implement the rules.

(c) The rules adopted by a governmental body may consider the number of employees employed by an offeror and the dollar volume of the offeror's business. The rules must provide that when computing the size of an offeror, the annual sales and receipts of the offeror and all of its affiliates must be included.

(d) The rules adopted by a governmental body must include the following criteria:

- (1) A wholesale business is not a small business if its annual sales for its most recently completed fiscal year exceed four million dollars (\$4,000,000).
- (2) A construction business is not a small business if its average annual receipts for the preceding three (3) fiscal years exceed four million dollars (\$4,000,000).
- (3) A retail business or business selling services is not a small business if its annual sales and receipts exceed five hundred thousand dollars (\$500,000).

(4) A manufacturing business is not a small business if it employs more than one hundred (100) persons.

(5) A business in any of the following sectors is not a small business if it employs more than one hundred (100) persons or if its annual sales exceed five million dollars (\$5,000,000):

(A) Information technology.

(B) Life sciences.

(C) Transportation.

(D) Logistics.

*As added by P.L.49-1997, SEC.1. Amended by P.L.4-2005, SEC.31; P.L.160-2006, SEC.10.*

### **IC 5-22-14-3.5**

#### **Veteran owned small business concern; eligibility**

Sec. 3.5. (a) A business qualifies as a small business for purposes of this chapter if the business is an Indiana small business concern owned and controlled by veterans, as defined in 15 U.S.C. 632(q)(3) as in effect January 1, 2013, and the business:

(1) has a current verification as a veteran owned small business concern under 38 CFR 74, et seq., by the Center of Veterans Enterprise of the United States Department of Veterans Affairs;

(2) is owned and controlled by one (1) or more veterans who have been residents of Indiana for at least one (1) year before making an offer or, in the case of a corporation, have at least fifty-one percent (51%) of the corporation's stock owned by one (1) or more veterans who have been residents of Indiana for at least one (1) year before making an offer; and

(3) has its principal place of business located in Indiana.

(b) The Indiana economic development corporation may assist the Indiana department of administration in doing any of the following:

(1) Compiling and maintaining a comprehensive list of veteran owned small businesses.

(2) Assisting veteran owned small businesses in complying with the procedures for bidding on state contracts.

(3) Examining requests from the Indiana department of administration for the purchase of supplies or services to help determine which purchases may be consistent with the goal described in section 11(a) of this chapter.

(4) Simplifying specifications and contract terms to increase the opportunities for veteran owned small businesses to participate in state contracts.

(c) The Indiana economic development corporation, in consultation with the Indiana department of administration, may develop programs to encourage cities, counties, towns, townships, and private businesses to adopt the goal for contracts with veteran owned small businesses described in section 11(a) of this chapter.

*As added by P.L.90-2013, SEC.2.*

### **IC 5-22-14-4**

#### **Identification of supplies; designation as small business; notice**

Sec. 4. (a) A governmental body that has adopted rules under this chapter may identify as a small business set-aside specific supplies for which purchase has been requested under this article.

(b) A small business designation must be made before the solicitation for the purchase is issued and the public notice of the purchase must state that the purchase is a small business set-aside.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-14-5**

##### **Reasonable expectation of two offers**

Sec. 5. A governmental body may not designate a purchase as a small business set-aside unless there is a reasonable expectation that offers will be obtained from at least two (2) small businesses capable of furnishing the desired supplies or service at a fair and reasonable price.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-14-6**

##### **Solicitation confined to small businesses**

Sec. 6. If a purchase is designated as a small business set-aside, the solicitation must be confined to small businesses.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-14-7**

##### **Award of contract**

Sec. 7. A contract shall be awarded to the lowest responsible and responsive offeror among the small businesses in accordance with the rules of the governmental body.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-14-8**

##### **Acceptance of offer resulting in unreasonable price**

Sec. 8. If the purchasing agent determines that acceptance of the lowest responsible and responsive offer will result in the payment of an unreasonable price, the purchasing agent shall reject all offers and may withdraw designation of the purchase as a small business set-aside.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-14-9**

##### **Assistance from Indiana economic development corporation**

Sec. 9. The Indiana economic development corporation may assist a governmental body in doing any of the following:

- (1) Compiling and maintaining a comprehensive list of small businesses.
- (2) Assisting small businesses in complying with the procedures for bidding on governmental contracts.
- (3) Examining requests from governmental bodies for the purchase of supplies to help determine which purchases are to be designated small business set-asides.

(4) Simplifying specifications and contract terms to increase the opportunities for small business participation in governmental contracts.

(5) Investigations by a governmental body to determine the responsibility of offerors on small business set-asides.

*As added by P.L.49-1997, SEC.1. Amended by P.L.4-2005, SEC.32.*

#### **IC 5-22-14-10**

##### **Purchases subject to other provisions and rules; conflict of laws**

Sec. 10. A purchase from a small business under this chapter is subject to:

- (1) all other provisions of this article; and
- (2) the rules of the governmental body.

If there is a conflict between the laws described in subdivisions (1) and (2) and this chapter, this chapter governs.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-14-11**

##### **Veteran owned small business concern; rules; state contracting goals; procurement policies and procedures; reporting requirement**

Sec. 11. (a) The Indiana department of administration shall adopt rules under IC 4-22-2 to do the following:

- (1) Increase contracting opportunities for Indiana veteran owned small businesses described in section 3.5 of this chapter with a goal to procure in each state fiscal year at least three percent (3%) percent of state contracts with Indiana veteran owned small businesses.
- (2) Develop procurement policies and procedures to accomplish the goal described in subdivision (1), including guidelines to be followed by the Indiana department of administration in conducting the department's procurement efforts.

These procurement policies do not apply to a procurement of supplies and services to address immediate and serious government needs at a time of emergency, including a threat to the public health, welfare, or safety that may arise by reason of floods, epidemics, riots, acts of terrorism, major power failures, a threat proclaimed by the President of the United States or the governor, or a threat declared by the commissioner of the Indiana department of administration.

(b) The Indiana department of administration shall annually evaluate its progress in meeting the goal described in this section for the previous state fiscal year. Beginning in 2014, after June 30 and before November 1 of each year, the Indiana department of administration shall submit a report to the governor, the Indiana department of veterans' affairs, the commission on military and veterans affairs, and, in an electronic format under IC 5-14-6, the legislative council. The report must include:

- (1) the percentage goal obtained by the Indiana department of administration during the previous state fiscal year; and
- (2) a summary of why the Indiana department of administration

failed to meet the goal and what actions are being taken by the Indiana department of administration to meet the goal in the current state fiscal year.

(c) The Indiana department of administration shall post the report described in subsection (b) on the department's Internet web site not later than thirty (30) days after the report is submitted. The Indiana department of veterans' affairs shall post the report described in subsection (b) on the department's Internet web site not later than thirty (30) days after the report is submitted by the Indiana department of administration.

*As added by P.L.90-2013, SEC.3.*